

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

DONTE LAMONT HUNT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 3:12-cv-0055-CL

**OPINION AND ORDER ADOPTING
FINDINGS AND RECOMMENDATIONS**

SIMON, District Judge.

Magistrate Judge Mark D. Clarke issued a Report and Recommendation in the above-captioned case on October 24, 2012. Dkt. 14. Judge Clarke recommended that the Court grant Respondent United States of America's Motion to Dismiss, Dkt. 10, and dismiss this case. Petitioner filed objections. Dkt. 17.

Under the Federal Magistrates Act, the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." Federal Magistrates Act, 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

The Court has reviewed *de novo* Judge Clarke's report and recommendation. The Court agrees with Judge Clarke that Petitioner has failed to show that he meets the requirements of the "escape hatch" of 28 U.S.C. § 2255, which would permit Petitioner to petition for habeas relief pursuant to 28 U.S.C. § 2241. *Stephens v. Herrera*, 464 F.3d 895, 898 (9th Cir. 2006). Thus,

Petitioner’s “[28 U.S.C.] § 2241 petition is, in reality[,] a disguised § 2255 motion[.]” Dkt. 14 at 7. Because this is Petitioner’s second motion for relief under § 2255, and Petitioner has not obtained certification from the Ninth Circuit permitting him to bring a second motion, this court lacks jurisdiction to hear Petitioner’s § 2255 motion. *United States v. Lopez*, 577 F.3d 1053, 1061 (9th Cir. 2009) (“If the petitioner does not first obtain our authorization, the district court lacks jurisdiction to consider the second or successive application.”).

The Court, therefore, **ADOPTS** Judge Clarke’s report and recommendation, Dkt. 14.

IT IS SO ORDERED.

Dated this 8th day of January, 2013.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge